to it or, if no such local limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

Section 3 of the Courts of Judicature Act 1964 (Act 91) ("the CJA") defines the term "High Court" to mean the High Court in Malaya and the High Court in Borneo. Again, under s. 3 of the CJA, local jurisdiction means "in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu" and "in the case of the High Court in Borneo, the territory comprised in the Borneo States, namely, Sabah and Sarawak."

On perusal of the SCA and the CJA, it is clear that the Sessions Courts can exercise their functions on any cause or matter arising within their local jurisdiction. In like manner, the High Courts can exercise their local jurisdiction for their respective states or territory. Since the appellant resides and carries on his business in Bukit Mertajam, Province Wellesley, the matter is therefore within the local jurisdiction of the Sessions Court in Bukit Mertajam, Province Wellesley and consequently, within the jurisdictional purview of the High Court in Penang. The appellant is entitled to apply under s. 2 of the Third Schedule of the SCA to transfer the case to the Sessions Court, Bukit Mertajam, Province Wellesley. A liberal approach is adopted in construing s. 2 of the Third Schedule of the SCA (*Tung Lian Enterprise v. Poly Trading Company* [1993] 4 CLJ 189.

The legislature in creating a branch of the High Court in Malaya in each State, must have thought of bringing the High Court closer to the rakyat. Easy accessibility of the High Court would lessen the inconvenience of travelling (the amount of costs would not outweigh the inconvenience caused) and the incurring expense that would flow from it. This would, in turn, facilitate the disposal of cases and ease the backlog to a certain extent. This argument would likewise apply, with equal force, to the Sessions Court.

For the reasons adumbrated above, the appeal is allowed with costs. The case registered in the Sessions Court, Taiping, Perak is to be transferred forthwith to the Sessions Court, Bukit Mertajam, Province Wellesley.

Appeal allowed.

LANS KOPERAL CHELLAPAN A/L KANTASAMY

v.

MEJAR WAN GHAZALI BIN WAN DIN & 2 ORS.

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[ORIGINATING SUMMONS NO. 25-11-92 (T)]
26 SEPTEMBER 1993

ADMINISTRATIVE LAW: Certiorari - Decision of Court-martial - Leave to quash decision - Application for leave to be made ex-parte - To show prima facie application is not frivolous or vexatious and there is some substance in grounds - Whether trend of cases tend to show a liberal approach towards judicial review - Order 53 r. 1(1)(2) RHC 1980.

This is an application for leave for an order of *certiorari* to quash the decision of the court-martial delivered on 21 August 1993.

Held:

[1] The applicant has successfully showed *prima facie* that his application is not frivolous or vexatious and there are sufficient grounds, without embarking on the substantial merits of the case for leave to be granted.

[2] Consequently, all the proceedings and actions made in pursuance of the court-martial was ordered to be stayed and further, the respondents were ordered to supply a copy of the record of proceedings to the applicant.

[Leave for order of certiorari granted].

Cases referred to:

Association of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association [1990] 2 CLJ 734 / [1990] 3 MLJ 228 SC ***(foll)***

Government of Malaysia & Anor. v. Jagdis Singh [1987] CLJ 451 / [1987] 2 MLJ 185 SC ***(not foll)***

Haji Laugan Tarki Bin Mohd. Noor v. Mahkamah Anak Negeri Penampang [1988] 2 MLJ 85 SC ***(not foll)***

Lai Cheng Cheong v. Sowaratnam [1983] 2 CLJ 3 / [1983] 2 MLJ 113 FC ***(foll)***

Legislation referred to:

Rules of the High Court 1980, O. 53 r. 1(1)(2)

For the applicant - Darshan Singh; M/s. Darshan Singh & Co.

For the respondents - Fazillah Begum bte. Abdul Ghani, FC

JUDGMENT

Haji Abdul Malik bin Haji Ishak JC:
This is an application for leave for an order of *certiorari* to remove into this Court and quash the decision of the court-martial delivered on 21 August 1993. Though an application for such leave must be made *ex-parte*, yet the learned Federal Counsel appeared and opposed the said application. The grounds of the application are outlined in the statement made pursuant to O. 53 r. 1(2) of the Rules of the High Court 1980 ("the RHC").

Before me, learned Counsel for the applicant emphasised and laid great stress on three major grounds, *viz*:

(a) the evidence of the applicant was not contradicted nor challenged and it ought, therefore, to be accepted;
(b) the witnesses contradicted themselves; and
(c) the composition of the court-martial was irregular as there was no Judge Advocate General and consequently, its decision null and void.

It is pertinent to point out that in an application for leave of this nature (under O. 53 r. 1(1) of the RHC), I need not embark on the substantial merits of the case. All the applicant needs do at this leave stage is to show and "must show *prima facie* that the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application" (see the decision of the Supreme Court in *Association of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association* [1990] 3 MLJ 228 SC).

The learned Federal Counsel affirmed an affidavit dated 13 September 1993, wherein she averred, *inter alia*, that the applicant had not exhausted his domestic remedies. She submits that the remedy of judicial review is entirely a matter of discretion of the High Court and that such remedy will only be available in exceptional circumstances. She submits further that there is nothing exceptional about this case and urges this Court not to step into the shoes of the domestic tribunal. She cites *Government of Malaysia & Anor. v. Jagdis Singh* [1987] 2 MLJ 185 SC as an authority for her proposition.

Tan Sri Hashim Yeop A. Sani SCJ (as he then was) in *Government of Malaysia & Anor. v. Jagdis Singh (supra)* dealt with the question as to whether domestic remedies must first be exhausted if such remedies were available. His Lordship after examining in detail a series of authorities had this to say:

> A clear principle is reiterated here, that is, it is not a rigid rule that whenever there is an appeal procedure available to the applicant he should be denied judicial review. Judicial review is always at the discretion of the Court but where there is another avenue or remedy open to the applicant it will only be exercised in very exceptional circumstances.

Further down the judgment (at page 189, left hand column) his Lordship said:

> In answer to the first question we would therefore hold that the discretion is still with the Courts but where there is an appeal provision available to the applicant *certiorari* should not normally issue unless there is shown a clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice.

A year later, Tan Sri Hashim Yeop A. Sani SCJ (as he then was) delivered the judgment of the Supreme Court in *Haji Laugan Tarki Bin Mohd. Noor v. Mahkamah Anak Negeri Penampang* [1988] 2 MLJ 85 SC, where the decision in *Government of Malaysia & Anor. v. Jagdis Singh (supra)* was referred to and approved therein and his Lordship said:

> ... that the Court has a discretion to issue an order of *certiorari* if it can be shown that there is a lack of jurisdiction or there is a blatant failure to perform some statutory duty or there is a breach of natural justice. Therefore, the existence of an elaborate appeal provision in the law concerned is not a conclusive ground to refuse leave.

> The underlying principle should always be remembered that the jurisdiction of the High Court to grant an order of *certiorari* is supervisory in character and is exercisable over all inferior tribunals.

Unfortunately, *Government of Malaysia & Anor. v. Jagdis Singh (supra)* and *Haji Laugan Tarki Bin Mohd. Noor v. Mahkamah Anak Negeri Penampang (supra)* did not consider the Federal Court decision of *Lai Cheng Cheong v. Sowaratnam* [1983] 2 MLJ 113 FC, where Wan Suleiman FJ (as he then was) held that an applicant for *certiorari* is not normally obliged to have exhausted his rights of appeal within the administrative hierarchy nor need he have

exhausted his right of appeal to a Court of law. The appeal should therefore be allowed and the application for leave granted.

From the authorities cited, the trend would be towards a liberal approach in tackling the question of judicial review in respect of *certiorari*. The need to exhaust the domestic remedies should not fetter the discretion of the High Court in granting leave "where there are very exceptional circumstances or a clear lack of jurisdiction or a blatant failure to perform some statutory duty or where there are serious breaches of the principles of natural justice." I am satisfied that there are sufficient grounds, without embarking on the substantial merits of the case, for leave to be granted to the applicant. The applicant has successfully showed *prima facie* that his application is not frivolous or vexatious. Consequently, all the proceedings and actions made in pursuance of the court-martial be stayed and further, that the respondents to supply a copy of the record of proceedings to the applicant. The costs of these proceedings should rightly go to the applicant.

The learned Federal Counsel now files an appeal.

LEE CHOO YAM HOLDINGS SDN. BHD. & 2 ORS.

v.

KHOO YOKE WAH & 6 ORS. AND TAI KWONG GOLDSMITHS & JEWELLERS (IN RECEIVERSHIP) AND TETUAN SAHERAN & WOON & ORS. (INTERVENERS)

HIGH COURT, KUALA LUMPUR
DATO' ANUAR BIN DATO' ZAINAL ABIDIN J.
[SUIT NO. 02-24(31)-198-88]
19 APRIL 1993

PARTNERSHIP: Dissolution - Court appointed receiver - Equity to operate in the partners' interests - Paramount consideration of a Court of equity in appointing receiver - Liability of receiver to pay pressing debts - Instance of appointment of receiver not to operate as injunction against all 3rd party claims - Sections 41, 46 Partnership Act 1961 - Dissolved partnership - Priority for payment out of debts by receiver appointed by partners - Whether all debts to rank pari passu - Whether receivers liable to pay on garnishee orders absolute forthwith - Whether employees of partnership have priority over other unsecured creditors - Dissolved state not equivalent to bankrupt state - Section 46 Partnership Act - Section 31 Employment Act 1955 - Section 43 Bankruptcy Act 1967.

PRACTICE & PROCEDURE: English principle applicable - English Law via s. 5 Civil Law Act 1956, prior to 7-4-56 on receivership - Common law in pari materia persuasive - Garnishee proceedings - Whether leave of court required to garnish funds in receiver's custody - Merits of case - Paramount consideration of Court - Terms of the order appointing receiver - Statute under which receiver is appointed - Body corporate position distinguished from partnership _ Orders 45, 46, 49 Rules of High Court 1980 - Sections 226, 227, 292 Companies Act 1965 distinguished.

This is a case of an application by the receiver asking for directions from the Court of origin which appointed the receiver, subsequent to encountering the execution of two garnishee orders absolute totalling a sum of RM32,815.85 obtained by two of the seventeen (2nd) Interveners in the KL Sessions Courts by way of writ of seizure and sale against the garnishee, the 1st intervener, who held the fund of RM1,144.482.10 for the receiver as stakeholders, upon a